DEPARTMENT OF STATE INSTRUCTION

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NO.: A-352, March 25, 1960,

SUBJECT: Consular Convention with Japan.

TO: The American Embassy - TOKYO

611.9441/7-

Reference is made to Embassy despatch No. 144 of July 31, 1959, and to previous correspondence on the above subject.

Those of the following paragraphs which relate to the specifically listed questions in Embassy despatch No. 144 are numbered to correspond with the Embassy's numeration. Some further points, as brought out in the Embassy's white paper notes, are dealt with in the comments which follow numbered paragraph (1), or in numbered paragraphs (2) through (8) of this instruction.

(1) The annotated text conforms with the understanding of the Department as to the present state of the negotiations, subject to the considerations noted in this instruction. Absence of a comment upon material found upon the white paper notes of the Embassy does not, however, signify approval of the discussion contained therein.

Comment re Notes to Article 2:

The Department is of the opinion that a consular convention should not give an American consular employee at a consulate any greater privilege or benefit than an American employee attached to an embassy. While the privileges and benefits for each should be similar as to scope and content, they should not be formally compared by treaty. If the proposed Articles 13 (3) and 14 (3) were adopted, nothing would prevent the Japanese Government from withdrawing, administratively, all privileges and benefits from employees attached to the Embassy, thereby taking away all privileges and benefits of their counterparts at the consular posts in Japan outside of Tokyo. It is therefore readily apparent that a treaty obligation granting privileges and benefits to consulate employees should not be based upon what the Japanese administratively give to employees at the Embassy.

With reference to the Embassy's request for a confirmation of its belief regarding the privileges and benefits enjoyed by Japanese guards, messengers, drivers, and domestic servants in the United States, the following information is given: Guards and messengers

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DRAFTED BY: L:L/A:LJHarris:yj | 3-16-60 | 2-17-60 | 1-7-60 | 10-28-59 | APPROVED BY: Warde M. Cameron C/S-CR

CLEARANCES: 3-24-60

For clearances see attached sheet

L/T U/PR SCA FE CU SCS

MAR 2 1960

DEPARTMENT OF STATE INSTRUCTION

OFFICIAL USE ONLY
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FOR DC USE ONLY

NO.:

SUBJECT: Consular Convention with Japan.
Reference: Emb Despatch 144 of July 31, 1959, and Previous.

TO: The American Embassy, TOKYO

Those of the following paragraphs which relate to the specifically-listed questions in Emb Despatch 144 are numbered to correspond with the Embassy's numeration. Some further points, as brought out in the Embassy's white paper notes, are dealt with in the comments which follow numbered paragraph (1), or in unnumbered paragraphs (2) through (8) of this Instruction.

(1) The annotated text conforms with the understanding of the Department as to the present state of the negotiations, subject to the considerations noted in this Instruction. Absence of a comment upon material found upon the white paper notes of the Embassy does not, however, signify approval of the discussion contained therein.

Comment re Notes to Article 2:

The Department is of the opinion that a Consular Convention should not give an American consular employee at a consulate any greater privilege or benefit than an American [redacted] employee attached to an Embassy. While the privileges and benefits for each should be similar as to scope and content, they should not be formally compared by treaty. If the proposed Articles 13 (3) and 14 (3) were adopted, nothing would prevent the Japanese Government from withdrawing, administratively, all privileges and benefits from [redacted] employees attached to the Embassy, thereby taking away all privileges and benefits of their counterparts at the consular posts in Japan outside of Tokyo. It is therefore readily apparent that a treaty obligation granting privileges and benefits to consulate employees should not be based upon what the Japanese administratively give to [redacted] employees at the Embassy.

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With reference to the Embassy's request for a confirmation of its belief regarding the privileges and benefits enjoyed by Japanese guards, messengers, drivers, and domestic servants in the United States, the following information is given: Guards and messengers who are

Return after correction.
S/S-CR

MAR 23 1960 A.M.

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DRAFTED BY: L:L/A:LJHarris:yj 3-16-60 2-17-60 1-7-60, 10-28-59
APPROVED BY: Mr. M. McCameron

CLEARANCES: L/T U/PR SCA FE CU SCS

who are Japanese nationals, and are employed by the Japanese Government for work at their Embassy, receive Federal income and excise tax exemptions, gasoline and title tax exemptions, and sales tax exemption in the District of Columbia. Their names are also carried on the White List. Guards and messengers employed by the Japanese Government for work at a consulate enjoy Federal income tax exemptions. Drivers and domestics, employed by the Japanese Government for work at the Embassy or the consulates, receive Federal income tax exemption only; and are not exempt from Federal excise taxes because of a Treasury Department Ruling.

Comment re Notes to Article 5:

The Embassy inquires why the most-favored-nation clause is deleted. The presence of such a provision introduces an undesirable element of uncertainty into the interpretation of the Convention. Moreover, a most-favored-nation clause would enable the Japanese Government to claim certain privileges set forth in older treaties which the United States would not wish to agree to at this time. FYI Costa Rican estates clause. (T.I.A.S. 2045) End FYI. As the Embassy will note, the draft of the short form convention omits the provision and the short form convention is intended to establish a standard for future negotiations of consular conventions.

The Department agrees that commas may be placed before and after the words "upon request" in Paragraph 1.

Comment re Notes to Article 13:

Despite careful study, the Department does not fully understand the scope of the Embassy's comments; but it does agree with the conclusion that Articles 13 (3) and 14 (3), and the Agreed Official Minutes thereto should be deleted. In this respect, the Embassy is instructed to follow the pertinent instructions in the Department's A-539 of April 10, 1957. As was pointed out there in the Department's comments to the Notes to Article 2, the counterpart at the Embassy may be non-existent. American consular employees at the Consulate should receive the privileges and benefits of Article 13 (1) and 13 (2) (a) as a treaty right.

In connection with Article 13 (2) (a), no approval has been given by the Department to the second sentence thereof. See the Department's A-539 of April 10, 1957.

Comment re Notes to the Protocol:

The Department continues to desire the deletion of Paragraph 2 of the Protocol.

One effect of Paragraph 2 would be to define Ryukyuan juridical entities as Japanese "nationals" for the purposes of the Convention. It is the Department's view that it would hardly be consistent with the second sentence of Article 3 of the Peace Treaty to have such Ryukyuan juridical entities represented in the United States by Japanese consular officials. This is especially true since certain of these entities are organized under GRI or USCAR legislation, and are considered to be instruments of United States policy. Furthermore,

Furthermore, while the Japanese Government has an interest in the welfare of Ryukyuans, specific recognition of the right of Japanese consuls to represent them in the United States in the same manner as other Japanese nationals could create serious problems in certain estate, protective and maritime matters where authorization for the Consul's activities from the appropriate authority in the Ryukyu Islands would be required. The term "national" in relation to Japan should not, therefore, be defined further than it is in subparagraph 3 (b) of Article 2 of the Convention.

The redrafting of Paragraph 1 and the deletion of Paragraph 2 are believed to be a sufficiently obvious justification for the deletion of the minutes thereto. At the time this deletion is proposed, the negotiator is instructed to state that the deletion is proposed solely because the minutes have been rendered superfluous because of changes in the Protocol, and that the deletion does not represent any change in the position of the United States with respect to its rights and powers in the Article III islands.

(2) The text of the new estates clause is made an enclosure to this despatch. The estates clause has been revised considerably to narrow the consular officer's powers under the treaty, and to make it clear that it is for the courts of the state in which an estate is being administered to determine, in accordance with its law and public policy, the circumstances under which a foreign consul may appear in the proceedings. In the absence of overriding treaty provisions, matters of descent and distribution are to be governed by state law. The text of this article represents the maximum rights in estate matters which the United States is presently willing to grant by treaty, and it has been approved throughout the Government. American Bar Association opposition thereto can still be expected, since no agreement has been reached with the latter, even after prolonged discussion. FYI, one section of the American Bar Association at its annual convention in Miami in August, 1959, disapproved this very clause. End FYI. The Embassy's comments and suggestions as to the substance of this clause are not solicited. The alternative to the use of this clause is a convention without an estates clause. It should be proposed to the Japanese without modification.

(3) The comments made in the Department's A-539 of April 10, 1957, stand with reference to the status of Paragraphs 1 and 5 of the Protocol.

(4) The Department is pleased to note that the Embassy agrees to the deletion of Article 13 (3) and 14 (3), Paragraph 2 of the Protocol, and Article 5 (3). See the complete and thorough discussion of these points in the Department's A-539 of April 10, 1957. The reference thereto in the Agreed Official Minutes to these provisions should also be deleted. See a further discussion of these points in the Department's comments under question (1), above.

(5) Under the Embassy's proposal concerning Article 2 (10) and (11), the words "unless a national of the sending state" are deleted. This would mean that all Americans would have to be career consular employees to get the benefits of the

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consular convention, and no American employee could be a career consular employee who is a guard, driver, or messenger. This would tend to make a mockery of the word "career". While such a factual situation may never arise, it is believed that the language suggested by the Embassy is more restrict than the present language. For this reason, the Department does not approve the Embassy's suggested change. With respect to the proposed change in Article 5 (3), the use of the new estates clause, and the necessary deletion of the most-favored-nation clause makes the Embassy's proposal unacceptable. See a further discussion of these points under the Department's comments under question (1), above.

(6) See paragraph 11 of Embassy despatch No. 288 of September 26, 1955, paragraph 9 of the Department's A-382 of December 9, 1955, and paragraph 13 of the Department's A-86 of January 12, 1955.

(7) The Department agrees that it would not be desirable to include further reference in the proposed convention to privileges relating to the operation of cultural centers, beyond the present reference in Article 17 (5). See, in this connection, IV Hackworth 874-6, Embassy despatch No. 703 of January 14, 1957, and the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 et seq. FYI, the Agency reply to TOUSI 440, which was dated April 3, 1957, was not cleared with appropriate offices of the Department of State, and the proposed discussion in paragraph 4 of that April 3, 1957, despatch has apparently never taken place. A consular convention is not considered to be an appropriate vehicle for establishing the status of cultural centers. Accordingly, the difficulties mentioned in the first paragraph of Embassy's telegram No. 1978 could not be "blanketed" under such a convention. End FYI.

(8) The following other comments are offered to the Embassy:

With respect to Article 3, the Embassy will note that the model short form consular convention omits the traditional provision permitting consular officers to reside wherever consular officers of any third country may reside. The United States has found it necessary from time to time to order closed all consular establishments of a particular country, or to restrict them to particular localities. It seems, therefore, that to avoid possible future misunderstandings, and to retain necessary flexibility, the United States should not hereafter agree to such a provision in any new consular convention. The Embassy might therefore suggest the deletion of the words " ... at any place where the receiving state agrees to the establishment of a consular office." of Article 3 (1), and substitute " ... at any place where the receiving state agrees to the establishment thereof." Article 3 (2) might also be amended to include the following words, " ... subject to the right of the receiving state to object thereto.", thereby affirming the ability of this country to close down a consular office by objecting to the district thereof, notwithstanding the fact that a third state may have a consular office or district at the place in question. Article 3 (3) would then be deleted, and old (4) renumbered as (3).

With respect

With respect to Article 10 (3), the Department requests the Embassy to comment upon the feasibility of amending the first clause thereof to read as follows: "During such time as the receiving state is engaged in armed conflict, ... ". Such a change will conform with the language used in various amendments to acts of Congress enacted since the Korean conflict, which formerly authorized such action "in time of war".

With respect to Article 17, the Department proposes the addition of a new subsection, 17 (1) (f) to read as follows: "to obtain copies of or extracts from documents of public registry." This language would serve the purpose of giving further recognition to the sources from which consular officers may obtain necessary information.

Copies of the short form model consular convention will be sent to the Embassy in the near future. As further suggested changes in the presently accepted draft may be brought up by both sides, the Embassy may wish to give serious consideration to reverting to the short form model draft in its entirety, thereby obviating attempts to conform the present draft to the content and philosophy of the new draft, or to further Japanese suggestions. This change might be brought about more easily if the Japanese appear to be willing to accept for the present draft many of the simplified propositions of the new draft.

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Enclosure:

Estates Clause.

Enclosure

ESTATES CLAUSES

(1) In the case of the death of a national of the sending state in the territory of the receiving state, without having in the territory of his decease any known heir or testamentary executor, the appropriate local authorities of the receiving state shall as promptly as possible inform a consular officer of the sending state.

(2) A consular officer of the sending state may, within the discretion of the appropriate judicial authorities and if permissible under the then existing applicable local laws in the receiving state:

(a) take provisional custody of the personal property left by a deceased national of the sending state, provided that the decedent shall have left in the receiving state no heir or testamentary executor appointed by the decedent to take care of his personal estate; provided that such provisional custody shall be relinquished to a duly appointed administrator;

(b) administer the estate of a deceased national of the sending state who is not a resident of the receiving state at the time of his death, who leaves no testamentary executor, and who leaves in the receiving state no heir, provided that if authorized to administer the estate, the consular officer shall relinquish such administration upon the appointment of another administrator or upon the petition of heirs having the majority interest in such estate;

(c) represent the interests of a national of the sending state in an estate in the receiving state, provided that such national is not a resident

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of the receiving state, unless or until such national is otherwise represented; provided, however, nothing herein shall authorize a consular officer to act as an attorney at law.

(3) Unless prohibited by law, a consular officer may, within the discretion of the court, agency, or person making distribution, receive for transmission to a national of the sending state who is not a resident of the receiving state any money or property to which such national is entitled as a consequence of the death of another person, including shares in an estate, payments made pursuant to workmen's compensation laws, pension and social benefits systems in general, and proceeds of insurance policies. The court, agency, or person making distribution may require that a consular officer comply with conditions laid down with regard to (a) presenting a power of attorney or other authorization from such nonresident national, (b) furnishing reasonable evidence of the receipt of such money or property by such national, and (c) returning the money or property in the event he is unable to furnish such evidence.

(4) Whenever a consular officer shall perform the functions referred to in paragraphs (2) and (3) of this Article, he shall be subject, with respect to the exercise of such functions, to the laws of the receiving state and to the jurisdiction of the judicial and administrative authorities of the receiving state in the same manner and to the same extent as a national of the receiving state.